(1)

231/06

R.R. No.....
Presented by Shri B.K. Tiwari
dated.....16/1/06

(4)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.NO. 297 /2006 Single Bench

PETITIONER

Vinod Kumar Singh, Aged about 35 years, S/o. Shri Kapil Ram Yadav, R/o. Shastrinagar, Camp-1, Bhilai, Thana Chawni, District Durg (C.G.)

VERSUS

RESPONDENTS

1. State of Chhattisgarh, Through the Collector, Durg (C.G.)

2. The Station House Officer, P.S. Bhilainagar, District Durg (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT OF CERTIORARI

AFR

Satish
14.6.06

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 799 of 2006

Petitioner Vinod Kumar Singh

Versus

Respondents State of Chhattisgarh & another

Post for order on 14th June, 2006.

Sd/-
Satish K. Agnihotri
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 799 of 2006

Petitioner Vinod Kumar Singh

Versus

Respondents State of Chhattisgarh & another

SB: Hon'ble Mr. Justice **Satish K. Agnihotri, J**

Shri Anand Kumar Tiwari, *Advocate for the petitioner.*

Shri Vinay Harit, Deputy Advocate General with Smt. Anju Ahuja, Deputy Govt. Advocate for the respondents/State.

ORDER

(June, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The present petition filed under Article 226/227 of the Constitution of India assails the order dated 27.8.2001 (Annexure P/2) and the order dated 3.3.2005 (Annexure P/4) passed by the respondent No.1 whereunder the respondent No.1/Collector, Durg declined to release the vehicle having registration No. M.P.-23-GA-6006 on interim supurdnama. The vehicle was allegedly seized under Section 34 (1) (a) of the M.P. Excise Act, 1915 (for short 'the Act 1915').

2. The undisputed facts in nutshell are that a Marshal Jeep bearing registration No. M.P.-23-GA-6006 was seized by the Excise Department for an offence committed under the provisions of Section 34 (1) (a) of the Act, 1915. Out of three persons involved in the offence, two persons were acquitted by the Judicial Magistrate First Class, Durg and the third person was acquitted by the Additional Sessions Judge (F.T.C.) in appeal. The petitioner was not involved as an accused but the vehicle which was under ownership of the petitioner was seized.

3. That by order dated 27.8.2001 the respondent No.1/Collector, Durg directed the petitioner to furnish a bank guarantee of Rs. 2,50,000/- for release of the said vehicle. The petitioner being unable to submit the said Bank Guarantee filed an application to permit the petitioner to furnish solvent security in lieu of the bank guarantee. The said application was rejected by the first respondent by order dated 3.3.2005. The order dated 3.3.2005 and order dated 27.8.2001 passed by the Collector, Durg were impugned in W.P.No. 3774/2005.

4. This Court after hearing counsel for the parties in its order dated 17.8.2005 passed in W.P.No. 3774/2005 (filed by the present petitioner Shri Vinod Kumar Singh) directed the Collector, Durg to dispose of the confiscation proceedings within a period of two months from the date of the order. The said petition was accordingly disposed of.

5. The Collector, Durg failed to comply with the order dated 17.8.2005 passed by this Court in W.P.No. 3774/2005 resulting into filing of the instant petition W.P.No. 799/2006.

6. This Court on 1.5.2006 passed the following order "It is stated that this Court in its order dated 17-08-2005, passed in W.P. No. 3774/2005 directed the Collector, Durg to dispose of the confiscation proceedings within a period of two months from the date of the order. But, the Collector has not yet concluded the proceedings nor sought for extension of time from this Court. It is a serious matter where the Collector, Durg has apparently flouted the writ issued by this Court, that too, without seeking extension of time.

In that view of the matter, list this case on 10-05-2006. On that date, the Collector, Durg shall be present in person at 10.30 a.m. before the Court to answer the serious lapse committed by him."

7. The first respondent/Collector, Durg pursuant to the order dated 1.5.2006 filed his submissions stating that the first respondent could not comply with the order because of the following reasons:-

> "Thereafter due to more pressing assignments connected with elections to the Nagar Nigam, Bhilai no, further, proceedings could take place upto 22.12.2005. On 22.12.2005 though the petitioner was absent, the evidence of prosecution was closed and time was granted to the non applicants for production of evidence in their defense.
>
> It is, humbly, submitted that from 22.12.2005 to 16.02.2006, the case had to be adjourned by the answering respondent because of the fact that either the non applicants including the petitioner were absent or they prayed for adjournment for production of defense witnesses which they ultimately declined to do on 02.02.2006."

Ultimately the final order was passed on 16.3.2006, confiscating the said vehicle bearing registration No. M.P.-23-GA-6006. The answering first respondent/Collector has further tendered his unqualified apology for the serious lapse on his part.

8. The main question involved herein, is whether the first respondent has committed a contempt of this Court by not complying with the order dated 17.8.2005 passed in W.P.No. 3774/2005 for disposal of the confiscation proceedings within a period of two months. The reasons stated by the first respondent cannot be accepted as cogent and justified reasons in non-compliance of the order of this Court. If there was any difficulty in complying with the order, the first respondent ought to have moved this Court for extension of time. The first respondent had not chosen to do so. However, he has taken its own time in disposal of the confiscation proceedings, in flagrant violation of this Court's order dated 17.8.2005.

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9. Having considered the written statement of the first respondent, it appears that the conduct of the first respondent is reprehensible and the delay in disposal of the confiscation proceedings is deliberate and intentional. The first respondent has diverted the course of justice by not complying with the order dated 17.8.2005 passed by this Court in letter and sprit. However, in the facts of the case that the final order has been passed and the first respondent has tendered the unqualified apology, it is not proposed to impose any punishment. The first respondent is warned not to recur such conduct in future.

10. In view of the fact that the confiscation proceeding has been disposed of by order dated 16.3.2006 and the petitioner does not intend to press this petition any further, the petition is accordingly disposed of. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur